

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
SECURITIES DIVISION

IN THE MATTER OF:

ORDER NO. 97-0381 AO

RULE TO ESTABLISH RULES AND PROCEDURES  
TO APPLY TO INVESTIGATIONS AND EXAMINATIONS  
CONDUCTED BY THE SECURITIES DIVISION

ORDER ADOPTING 710 IAC 1-21 TO ESTABLISH RULES  
AND PROCEDURES TO APPLY TO INVESTIGATIONS AND EXAMINATIONS

FILED  
DEC 31 1997

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Comes now Bradley W. Skolnik, Indiana Securities Commissioner, and pursuant to the authority granted under IC 23-2-1-15, finds as follows:

1. The Indiana Securities Division caused to be published in the November 1, 1997 edition of the Indiana Register (21 Ind. Reg. 728 [1997]), a proposed rule adding 710 IAC 1-21 to establish rules and procedures to apply to investigations and examinations conducted by the Indiana Securities Division.

2. The Indiana Securities Division caused to be published on November 1, 1997, a notice in a newspaper of general circulation in Marion County, to wit: The Indianapolis Star and News, describing the proposed rule and disclosing the date, time and location of a public hearing regarding the rule.

3. A public hearing in regard to the proposed rule was held on November 25, 1997 at 10:30 a.m. at the Office of the Secretary of State, Securities Division, 302 West Washington Street, Room E111, Indianapolis, Indiana.

4. The Securities Commissioner hereby finds that the proposed rule (710 IAC 1-21) should be adopted in the same form as that provided in LSA Document No. 97-247 published in the November 1, 1997 edition of the Indiana Register (21 Ind. Reg. 728 [1997]).

IT IS THEREFORE ORDERED that the rule (710 IAC 1-21) adding 710 IAC 1-21 to establish rules and procedures to apply to investigations and examinations conducted by the Securities Division is ADOPTED.

IT IS FURTHER ORDERED AND DIRECTED that the rule (710 IAC 1-21) establishing rules and procedures to apply to investigations and examinations conducted by the Securities Division attached hereto be submitted to the Attorney General and the Governor of Indiana for their approval as required under IC 4-22-2.

ORDERED at Indianapolis, Indiana, this 31st day of December, 1997

SUE ANNE GILROY  
SECRETARY OF STATE



BRADLEY W. SKOLNIK  
INDIANA SECURITIES COMMISSIONER



TITLE 710 SECURITIES DIVISION

PROPOSED RULE  
LSA DOCUMENT # 97-247

DIGEST

Adds 710 IAC 1-21 to establish rules and procedures to apply to investigations and examinations conducted by the securities division pursuant to IC 23-2-1. Effective 30 days after filing with the secretary of state.

**710 IAC 1-21**

**SECTION 1. 710 IAC 1-21 IS ADDED TO READ AS FOLLOWS:**

**Rule 21. Investigation; Rules of Practice**

**710 IAC 1-21-1 Scope**

**Authority:** IC 23-2-1-15

**Affected:** IC 23-2-1

**Sec. 1.** This rule applies to investigations and examinations conducted by the division pursuant to IC 23-2-1. (Securities Division; 710 IAC 1-21-1)

**710 IAC 1-21-2 Information obtained during the course of investigations**

**Authority:** IC 23-2-1-15

**Affected:** IC 23-2-1

**Sec. 2.** Information or documents obtained by the division in the course of any investigation, unless such information or documents are published by the division pursuant to its authority under IC 23-2-1, shall be deemed nonpublic. Such information and documents may be disclosed to:

- (1) representatives of domestic or foreign governmental authorities;
- (2) self-regulatory agencies;
- (3) state or federal law enforcement officers;
- (4) state securities law administrators;
- (5) special counsels; and
- (6) trustees in bankruptcy;

upon the acceptance of an access request letter. The division may also, to the extent

necessary, disclose such information and documents in court proceedings, when ordered to do so by a court of competent jurisdiction, or when appropriate in furtherance of any ongoing investigation or proceeding. (Securities Division; 710 IAC 1-21-2)

**710 IAC 1-21-3 Applicability**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 3. This rule is applicable to a person who appears:**

- (1) voluntarily;**
- (2) pursuant to an administrative investigative subpoena or administrative order; or**
- (3) at the request of, or with the permission of, the division.**

Such person, being sworn in an investigation or examination, shall be referred to as a "witness". Such investigation or examination, hereinafter referred to as an "investigative proceeding", shall be conducted by the division before one (1) or more of its deputy commissioners for enforcement, or before any other person designated by the division for the purpose of taking testimony of witnesses and receiving other evidence. (Securities Division; 710 IAC 1-21-3)

**710 IAC 1-21-4 Official transcript**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 4. Transcripts, if any, of investigative proceedings shall be recorded solely by the official reporter or by any other person or means designated by the officer conducting the investigation. There shall be one (1) official transcript of a witness' testimony, which shall be the property of the division. Except as provided by section 5 of this rule, any other contemporaneous, verbatim transcription by writing or recording, in any form and in any media, shall be prohibited. (Securities Division; 710 IAC 1-21-4)**

**710 IAC 1-21-5 Access to transcripts**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 5. Any witness, and counsel, upon proper identification and after giving reasonable prior notice, shall have the right to inspect the official transcript of the witness' own testimony at the division's office during normal business hours; but neither the witness, nor counsel for the witness, shall have the right to remove, copy by any manner, or order a copy of the official transcript without authorization by the commissioner. (Securities Division; 710 IAC 1-21-5)**

**710 IAC 1-21-6 Access to documentary evidence**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 6.** A person complying with any request, order, or subpoena issued by the division for the production of documentary evidence shall retain the originals and shall provide the division with clearly legible, true, and complete copies of the documents requested, along with a signed cover letter, which shall identify those documents with a reasonable degree of specificity. (Securities Division; 710 IAC 1-21-6)

**710 IAC 1-21-7 Witnesses; representation by counsel**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 7.** A witness may be accompanied, represented, and advised by counsel, as defined in 710 IAC 1-19-2. In order to protect the integrity of any investigation, the commissioner may, in the reasonable exercise of the commissioner's discretion, prohibit multiple representations by counsel, and may prohibit representation by counsel who is likely to become a witness during the course of either the investigation itself or any legal proceedings expected to ensue upon the investigation's conclusion. (Securities Division; 710 IAC 1-21-7)

**710 IAC 1-21-8 Witnesses; advice from counsel**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 8.** Counsel may advise witnesses before, during, and after the conclusion of testimony given in the course of an investigative proceeding, and may make summary notes during such testimony solely for use in the representation of the witness. The witness is responsible for having counsel present at the time and place designated by the officer conducting the investigation. Where no timely prior request for adjournment was made, or where such request was denied for good cause, neither the substitution of counsel nor the failure of counsel to appear at the designated time and place for the witness' testimony shall constitute an acceptable ground for the witness' failure to appear at the designated time and place or to answer the questions of the officer conducting the examination. (Securities Division; 710 IAC 1-21-8)

**710 IAC 1-21-9 Sequestration of witnesses**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 9. Unless permitted in the discretion of the division employee or other person designated by the division conducting the investigation, no witness shall be present during the examination of any other witness called in such proceeding. Where counsel represents more than one (1) witness as set forth in this section and sections 7 and 8 of this rule, counsel shall not inform one (1) witness of the nature and contents of another witness' examination. (Securities Division; 710 IAC 1-21-9)**

**710 IAC 1-21-10 Access to premises by division; generally**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 10. All broker-dealers and investment advisers registered with the division shall, upon request, provide members of the division's staff prompt access, during regular business hours, to that part of the premises at the broker-dealer's or investment adviser's place of business where documents are stored or where trading or investor solicitation is conducted. (Securities Division; 710 IAC 1-21-10)**

**710 IAC 1-21-11 Observation of conduct of business by division**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 11. A broker-dealer or investment adviser registered with the division shall accord members of the division staff the opportunity to observe the conduct of business at the broker-dealer's or investment adviser's place of business. (Securities Division; 710 IAC 1-21-11)**

**710 IAC 1-21-12 Access to documents by division**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

**Sec. 12. (a) The division, without notice, may examine, in a manner reasonable under the circumstances, the records, within or without Indiana, of a registered broker-dealer, agent, investment adviser, or investment adviser representative in order to determine compliance with the Indiana Securities Act. Broker-dealers, agents, investment advisers, and investment adviser representatives shall make their records available to the division in legible form.**

(b) The division may copy records or require a broker-dealer or an investment adviser to copy records and provide the copies to the division to the extent and in the manner reasonable under the circumstances.

(c) The division may impose a reasonable fee for the expense of making any copies under subsection (b). (Securities Division; 710 IAC 1-21-12)

**710 IAC 1-21-13 Access to persons by division**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-1**

Sec. 13. Members of the division staff may interview individuals, included within the scope of IC 23-2-1, who may be present on the broker-dealer's or investment adviser's premises and who voluntarily consent to be interviewed. If such interview is conducted on the broker-dealer's or investment adviser's premises, division staff shall be given access to a private, enclosed area where the interview can go forward without monitoring, surveillance, or interference by any kind of device or by persons who are not members of the division staff. (Securities Division; 710 IAC 1-21-13)

**710 IAC 1-21-14 Failure to cooperate**

**Authority: IC 23-2-1-15**

**Affected: IC 23-2-11**

Sec. 14. (a) A person shall cooperate in any inquiry, investigation, or inspection conducted by, or on behalf of, the division, for purposes of determining whether or not any person has violated or is about to violate any provision of the Indiana Securities Act or any rule or order promulgated thereunder. A person's willful failure to cooperate, absent a bona fide claim of privilege, may be deemed by the division a violation of the Indiana Securities Act within the meaning of IC 23-2-1-11(a)(2) and thus subject the person to denial, suspension, or revocation of registration or a bar from registration.

(b) The following are examples of, but not limited to, conduct by a person that may be deemed a failure to cooperate:

(1) The failure to timely respond by way of appearance or production of documents to a subpoena or order issued by the division pursuant to IC 23-2-1 or as may otherwise be provided by law.

(2) The failure to answer any question pertinent to inquiry made pursuant to IC 23-2-1 or other applicable law unless the response to said question is subject to a bona fide claim of privilege.

(3) The failure to grant the division personnel access to the business premises of a broker-dealer or investment adviser or to the records and documents that the broker-dealer or investment adviser is required, by statute or rule, to make available for inspection.

(4) The failure to attend any scheduled proceeding at which the person's appearance is directed. In the event a person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the person's responsibility to do so in a timely fashion. The failure of a person to retain counsel, absent a showing of good cause thereof, shall not require an adjournment of the proceeding.

(5) The failure to timely respond or to provide information requested pursuant to a demand under IC 23-2-1 or any other applicable law.

(6) Aiding or abetting another person's failure to cooperate.

(Securities Division; 710-IAC 1-21-14)